IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5346 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

IQBAL AHMED KARBHARI

Versus

SUB DIVISIONAL MAGISTRATE

Appearance:

1. Special Civil Application No. 5346 of 2001

MR BS PATEL for Petitioner No. 1

MR KP RAVAL AGP for Respondents No. 1-2

CORAM : MR.JUSTICE D.K.TRIVEDI

Date of decision: 06/03/2002

ORAL JUDGEMENT

Rule. Mr. K.P. Raval, learned AGP waives service of Rule on behalf of respondents. By consent, Rule is fixed forthwith. Heard. Mr. Patel, learned advocate for the petitioner and Mr. Raval, learned AGP for the respondent. During the hearing, I was taken through the order under challenge passed by the Sub-divisional Magistrate as well as order passed by the

District Magistrate namely the Appellate Authority in application filed by the petitioner. It is the contention of Mr. Patel that licence to run restaurant/hotel was granted by the authority and as per the licence, he is running his hotel business in October, 1990 and the petitioner has not violated any breach of the conditions of the licence. It is the case of the petitioner that earlier licence was granted for running hotel between 5 a.m. to 11 p.m. and subsequently, from 16th September, 1996 the licencing authority has granted licence for running hotel business for 24 hours, which is valid upto 19th December, 2003. The petitioner has also annexed the said licence issued by the licencing authority at Annexure - C.

2. As found from the petition, the petitioner's hotel is situated on the highway road between Jambusar and Padra and the bridge which is known as Gambira constructed by the Government of Gujarat is more utilised by the truck drivers, luxury drivers, individual car owners etc as it provides cut short road between Bombay and Saurashtra and therefore, there is 24 hours traffic on this road. This road always remained busy with 24 hours and as the petitioner is running hotel business, he has also provide facility of STD centre and also even for running his business, he has make all arrangement even by keeping security man keeping in mind the safety of the customers, who are travelling by road and he has also employed security persons. As found from the petition, the Sub-divisional Magistrate - respondent no. 1 had issued notice to the petitioner to remain present before him on 28th November, 2000 at 11 a.m. to explain as to why steps should not be taken as per the report submitted by the Police Sub Inspector, Jambusar to restrict the business hours of the hotel between 6 a.m. to 11 p.m. on the ground of scarcity of water and the surrounding population being poor, someone may take advantage of the darkness of the night hours and would cause trouble to the outsiders. In reply to the said notice, a detailed reply was submitted by the petitioner to the respondent authority explaining that no incident has occurred and no breach of licence is committed and report submitted by PSI Jambusar is not correct by highlighting that even the tube lights are provided upto the road and even in the close to the hotel, there is a garage and nearby even the Jambusar Police Station and Aamod Police Stations are situated and also police staffs are also taking round at night hours. It is further explained in the said reply that such report is given by the policy authority is only because of there was some dispute between PSI Bhatt attached to Jambusar Police Station, in which, a

complaint of the petitioner was not entertained with the result, the petitioner has to approach and file complaint in the court of the learned J.M.F.C. complaining about PSI Bhatt and the case was registered being M.Case No. 1/99 and because of this, at the instance of Mr. Bhatt such report was submitted. In short, it is the case of the petitioner that no untowards incident has occurred at the hotel and the petitioner is strictly complied the conditions of licence and requested the notice for restriction in the time limit be quashed.

3. It is the case of the petitioner that the respondent no. 1 had without giving any opportunity had as per the order dated 30th December, 2000 had restricted the business hours of the petitioner from 5 a.m. to 11 p.m. by relying upon the report of the police by accepting such report made by PSI Jambusar. The petitioner was also communicated the said order by forwarding the copy of the said order to the PSI Jambusar. The petitioner has challenged the said order by filing appeal before the second respondent namely District Magistrate, Bharuch. The district Magistrate Bharuch without giving any opportunity of being heard, as per the order dated 23rd May, 2002 had dismissed the appeal and confirmed the order under challenge and vacated the interim stay granted to the petitioner and further informing the petitioner that he can file appeal within 30 days before the State Government.

4. The petitioner was further informed as per corrigendom issued by the respondent no. 2 - District Magistrate, Bharuch on 3rd April, 2001 that as indicated earlier that the petitioner can file appeal within 30 days before the State Government. However, there is no provision for second appeal or review under the Hotel and Licencing Registration Rules. The said observation from the earlier order is deleted and accordingly, the petitioner has approached this Court for direction.

5. An affidavit-in-reply is filed by Shri Sanjeev Mishra, the Sub Divisional Officer dealing with the petition, who has passed the order of restricting the business hours of the petitioner. No affidavit is filed by respondent no. 2. It is the contention of Mr. Patel that once the order passed by the Sub-devisional Magistrate is challenged by preferring appeal before the District Magistrate on several grounds, the Appellate Court has without affording any opportunity of being heard had dismissed the appeal and confirmed the order. It is the contention of Mr. Patel that the authority had ignored the detailed reply, which shows that even doing

the hotel business, the petitioner has provided various adequate facilities by providing tube lights and fluid light as well as employed security persons and also provide facility of STD centre. There is no hotel in the area of 50 Km from the hotel of the petitioner and further, as there is no breach of condition of licence and the licence which was granted after previous approval of the Government, the respondent has no authority to change the terms of licence. It is further contended that the respondent no. 2 has not given any personal hearing and merely while disposing of the appeal has expressed and reproduced the contention raised in the appeal and confirmed the order as the same is arbitrary and violative of provisions of Articles 14 and 16 of the Constitution of India.

6. Mr. Raval, learned AGP has supported the order and while taking me through the affidavit of Sanjeevkumar, it is his submission that this is not a matter, where this court is required to entertain with the order under challenge and further that, the appellate court has after hearing, dismissed the appeal and confirmed the order.

7. Considering the submissions made before me and on examining the order passed by the appellate authority dated 23rd May, 2001, I am of the view that the appellate authority has without any application of mind has dealt with the appeal of the petitioner and confirmed the order of the lower authority. As found from the order the appellate court has while narrating the contentions raised in the appeal by highlighting the fact and further observing that even during the hearing it was placed before me on 28.2.2001, the appellate Court has contended that what is contended in the appeal memo and thereafter, the appellant authority has observed that he has perused the papers and passed the order dismissing the appeal and confirmed the order of the Sub-divisional Magistrate dated 30th December, 2000 and stay granted earlier was vacated by further observing that the appellant can file appeal to the State Government within 30 days and thereafter, as per corrigendum issued dated 3rd July, 2001, the petitioner was informed that there is no provision for filing second appeal or revision application and accordingly, the said para recorded in the earlier order was deleted. Reading the order, there is no appreciation made by the appellate authority and merely by observing that on examining the case and the order under challenge, he has dismissed the appeal of the appellant. In this petition, it is the contention of the petitioner that no hearing was given to the petitioner.

Prima-facie with this back ground as the appellant authority has not dealt with the appeal of the petitioner on merits and only dismissing the appeal by observing that on going through the case papers and the order under challenge, the appellate authority has dismissed the appeal by confirming the order of the Sub-divisional Magistrate. The appellate authority is required to give reasons in respect of the contentions raised before him and is required to record the finding about his appreciation of such contentions and the order further shown non application of mind as the appellate authority has issued corrigendum order subsequently on 3rd July, 2001, wherein, the appellate authority had deleted the para 2 of the order, wherein, the petitioner was informed that he can prefer appeal within 30 days to the State Government. Accordingly, only on this ground, the order passed by the appellate authority dated 30.12.2000 and 3.7.2001 are set aside. The appeal of the petitioner is remanded back to the appellate authority namely to the District Magistrate, Bharuch and the appellate authority shall decide the appeal afresh after giving notice to the petitioner and decide the same in accordance with law. As the matter is remanded back to the appellate authority, the order passed by the Sub-divisional Magistrate is accordingly stayed as even during the pendency of the appeal, the said order was stayed by the appellate authority.

4. With this observation, petition is disposed of. Rule is made absolute. There shall be no order as to costs. Direct service permitted.

(D.K.Trivedi, J.)
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